

MONTANA LEGISLATIVE HISTORY

Chapter 308 19 77

Bill H _____ S 393

Original bill & history ← C

H. Committee on Judiciary

Hearing Date(s) Mar 14 ✓ C

Mar 16 ✓ C

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Date Out Mar 16 ✓ C

S. Committee on Judiciary

Hearing Date(s) Feb 18 ✓ C

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Feb 18 ✓ C

Did this bill originate in an interim committee? _____ Yes _____ No

Committee _____

Report _____

1 *Senate* BILL NO. *393*
2 INTRODUCED BY *Brown, R. Smith*
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR
5 ENFORCEMENT OF THE STATE AIR AND WATER POLLUTION LAWS BY THE
6 DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AGAINST
7 PERSONS RESIDENT IN CANADA AND PERSONS WHO CANNOT BE LOCATED
8 IN MONTANA; AMENDING SECTIONS 69-3906, 69-3921.1, 69-4802,
9 AND 69-4820.1, R.C.M. 1947; PROVIDING AN IMMEDIATE EFFECTIVE
10 DATE."
11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
13 Section 1. Section 69-3906, R.C.M. 1947, is amended to
14 read as follows:
15 "69-3906. Definitions. Unless the context requires
16 otherwise, in this act: (1) "Air contaminant" means dust,
17 fumes, mist, smoke, other particulate matter, vapor, gas,
18 odorous substances, or any combination thereof.
19 (2) "Air pollution" means the presence in the outdoor
20 atmosphere of one or more air contaminants in a quantity and
21 for a duration which is or tends to be injurious to human
22 health or welfare, animal or plant life, or property, or
23 would unreasonably interfere with the enjoyment of life,
24 property, or the conduct of business.
25 (3) "Emission" means a release into the outdoor

1 atmosphere of air contaminants.

2 (4) "Person" means an individual, partnership, firm,
3 association, municipality, public or private corporation,
4 subdivision or agency of the state, trust, estate, or any
5 other legal entity and includes persons resident in Canada.

6 (5) "Advisory council" means the air pollution control
7 advisory council provided for in section 82A-606.

8 (6) "Board" means the board of health and
9 environmental sciences, provided for in section 82A-605.

10 (7) "Department" means the department of health and
11 environmental sciences, provided for in Title 82A, chapter
12 6."

13 Section 2. Section 69-3921.1, R.C.M. 1947, is amended
14 to read as follows:

15 "69-3921.1. Civil penalties ~~== actions against~~
16 ~~defendants not found in Montana.~~ (1) Any person who violates
17 any provision of this chapter, or any rule enforced
18 thereunder or any order made pursuant thereto, shall be
19 subject to a civil penalty not to exceed one thousand
20 dollars (\$1,000). Each day of violation shall constitute a
21 separate violation. The department may institute and
22 maintain in the name of the state any enforcement
23 proceedings hereunder. Upon request of the department, the
24 attorney general or the county attorney of the county of
25 violation shall petition the district court to impose,

1 assess and recover the civil penalty. The civil penalty is
2 in lieu of the criminal penalty provided for in section
3 69-3921.

4 (2) ~~Any action under subsection (1) of this section is~~
5 not a bar to enforcement of this chapter, or of rules or
6 orders made under it, by injunction or other appropriate
7 civil remedies.

8 ~~(by an action under subsection (1) or to enforce this~~
9 ~~chapter or the rules or orders made under it may be brought~~
10 ~~in the district court of any county where a violation occurs~~
11 ~~or is threatened if the defendant cannot be located in~~
12 ~~Montana.~~

13 (3) Monies collected hereunder, shall be deposited in
14 the state general fund."

15 Section 3. Section 69-4802, R. M. 1947, is amended to
16 read as follows:

17 "69-4802. Definitions. Unless the context requires
18 otherwise in this chapter:

19 (1) "Sewage" means water-carried waste products from
20 residences, public buildings, institutions, or other
21 buildings including discharge from human beings or animals
22 together with ground water infiltration and surface water
23 present.

24 (2) "Industrial waste" means any waste substance from
25 the process of business or industry, or from the development

1 of any natural resource together with any sewage that may be
2 present;

3 (3) "Other wastes" means garbage, municipal refuse,
4 decayed wood, sawdust, shavings, bark, lime, sand, ashes,
5 offal, night soil, oil, grease, tar, heat, chemicals, dead
6 animals, sediment, wrecked or discarded equipment,
7 radioactive materials, solid waste, and all other substances
8 that may pollute state waters;

9 (4) "Contamination" means impairment of the quality of
10 state waters by sewage, industrial wastes, or other wastes
11 creating a hazard to human health;

12 (5) "Pollution" means contamination, or other
13 alteration of the physical, chemical, or biological
14 properties of any state waters, which exceeds that permitted
15 by Montana water quality standards, including, but not
16 limited to, standards relating to change in temperature,
17 taste, color, turbidity, or odor; or discharge of any
18 liquid, gaseous, solid, radioactive, or other substance into
19 any state water which will or is likely to create a nuisance
20 or render the waters harmful, detrimental, or injurious to
21 public health, recreation, safety, welfare, livestock, wild
22 animals, birds, fish, or other wildlife. A discharge which
23 is authorized under the pollution discharge permit rules of
24 the board is not "pollution" under this chapter.

25 (6) "Sewerage system" means a device for collecting or

1 conducting sewage, industrial wastes, or other wastes to an
2 ultimate disposal point;

3 (7) "Treatment works" means works installed for
4 treating or holding sewage, industrial wastes, or other
5 wastes;

6 (8) "Disposal system" means a system for disposing of
7 sewage, industrial, or other wastes, and includes sewerage
8 systems and treatment works;

9 (9) "State waters" means any body of water, irrigation
10 system, or drainage system either surface or underground;
11 however, this subsection does not apply to irrigation waters
12 where the waters are used up within the irrigation system
13 and the waters are not returned to any other state waters;

14 (10) "Person" means the state, a political subdivision
15 of the state, institution, firm, corporation, partnership,
16 individual, or other entity and includes persons resident in
17 Canada;

18 (11) "Council" means the state water pollution control
19 advisory council provided for in section 82A-607;

20 (12) "Board" means the board of health and
21 environmental sciences, provided for in section 82A-605;

22 (13) "Department" means the department of health and
23 environmental sciences, provided for in Title 82A, chapter
24 6;

25 (14) "Local department of health" means the staff,

1 including health officers, employed by a county, city,
2 city-county, or district board of health;

3 (15) "Point source" means any discernible, confined and
4 discrete conveyance, including but not limited to any pipe,
5 ditch, channel, tunnel, conduit, well, discrete fissure,
6 container, rolling stock, or vessel or other floating craft,
7 from which pollutants are or may be discharged;

8 (16) "Owner or operator" means any person who owns,
9 leases, operates, controls or supervises a point source;

10 (17) "Standard of performance" means a standard adopted
11 by the board for the control of the discharge of pollutants
12 which reflects the greatest degree of effluent reduction
13 achievable through application of the best available
14 demonstrated control technology, processes, operating
15 methods, or other alternatives, including, where
16 practicable, a standard permitting no discharge of
17 pollutants;

18 (18) "Effluent standard" means any restriction or
19 prohibition on quantities, rates and concentrations of
20 chemical, physical, biological and other constituents which
21 are discharged into state waters."

22 Section 4. Section 69-4820.1, R.C.M. 1947, is amended
23 to read as follows:

24 "69-4820.1. Additional enforcement remedies. (1) In
25 addition to all other remedies created by this act, the

1 department is authorized to take appropriate enforcement
2 action on its own initiative to:

3 (a) prevent, abate, and control the pollution of state
4 waters;

5 (b) prevent, abate, and control any violation of a
6 condition or limitation imposed by a permit issued under
7 section 69-4806, R.C.M. 1947;

8 (c) prevent, abate, and control any violations of
9 regulations relating to pretreatment standards.

10 (2) In furtherance of subsection (1) of this section,
11 any person violating any condition, limitation, standard or
12 other requirement established pursuant to this chapter may
13 be served with a compliance order issued by the department.
14 Such order must specify the condition, limitation, standard
15 or other requirement violated and must set a time for
16 compliance. However, in establishing a time for compliance,
17 the department shall take into account the seriousness of
18 the violation and any good faith efforts that have been made
19 to comply with the condition, limitation, standard or other
20 requirement that has been violated. The compliance order
21 issued under this section shall be personally served by an
22 authorized representative of the department.

23 (3) The department is authorized to commence a civil
24 action seeking appropriate relief, including a permanent or
25 temporary injunction, for any violation which would be

1 subject to a compliance order under subsection (2) of this
2 section. Any action under this subsection may be commenced
3 in the district court of any county in which the defendant
4 is located or resides or is doing business or any county
5 where a violation occurs or is threatened if the defendant
6 cannot be located in Montana, and the court shall have
7 jurisdiction to restrain such violation and to require
8 compliance.

9 (4) Any person found to be in violation of a
10 condition, limitation, standard or other requirement
11 established pursuant to this section shall be subject to the
12 penalty provisions of section 69-4823, R.C.M. 1947.

13 (5) For the purpose of this subsection, the term
14 "person" shall mean, in addition to the definition contained
15 in section 69-4802, R.C.M. 1947, any responsible corporate
16 officer."

17 Section 5. Effective date. This act is effective on
18 its passage and approval.

-End-

Senate Judiciary Feb. 18 '77

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CONSIDERATION OF SENATE BILL 385:

Senator Thomas of Great Falls, sponsor of this bill, explained it to the committee. He said that this bill raises the parole from 1/4 to 1/2 less good time, and that the persistent offender section will be repealed. Also, section 1 establishes a new section with non-dangerous offenders. These persons will still remain at 1/4 time as far as their stay in the execution and sentencing.

The first proponent to testify was Tom Dowling, representing the County Attorneys Association and the Sheriffs Association, who said that they support S.B. 385.

Judge Shanstrom of Livingston told the committee that the district judges support S.B. 385 because it takes care of dangerous offenders in that he is only eligible for 1/2 time.

Hank Burgess, a members of the State Board of Pardons, was the next proponent to testify, saying that he feels this bill is the answer to the present problems in the criminal justice system.

Tom Honzel, representing the County Attorneys Assn., said that they do support this bill for the reasons Mr. Burgess gave.

Jack Lynch, Chairman of the Parole Board, said that this legislation would give them the authority to deal with the habitual criminal and that this is a very workable piece of legislation.

Gary Broyles, an investigator for the Board of Pardons appeared in support of S.B. 385.

There were no opponents present, so the Chairman allowed the committee members to question the witnesses. He then thanked the witnesses for appearing and excused them.

CONSIDERATION OF SENATE BILL 393:

Senator Bob Brown, District 10, sponsor of this bill, said that the problem is that drainage from coal development in southern Canada is going into the Flathead Lake.

Jim Cumming of Flathead County was the first proponent to testify. He said that this does apply to Canada, and submitted a copy of a report prepared by Ronald J. Schleyer of the EQC concerning the transboundary effect safeguarding the Poplar River in Montana (See Exhibit 1) He said that the state department has taken the attitude that they cannot do anything about requesting to stop the pollution, and that they have failed in a couple of other ways, especially in the area of international law on pollution. (See Exhibit 2) He further said that the international law on water and air pollution is far beyond state law. He then told the committee about the Ohio vs. BASF Wayandotte Corp. case which stemmed from pollution by the Wayandotte Corp. in southern Ontario. (See Exhibit 3)

There were no opponents to S.B. 393 present, so Senator Turnage, the committee Chairman, allowed the committee members to ask questions of the witnesses. He then thanked the witnesses and said that the committee would take the bill under consideration.

CONSIDERATION OF SENATE BILL 402:

The sponsor of this bill, Senator Murray, had to attend another meeting, so Greg Morgan of the Montana Bar Association presented S.B. 402 to the committee for him. He told the committee that the Bar Assn. is in favor of the bill and the medical malpractice review panel because they will decide if there is substantial evidence. He then explained how the bill was drafted and said that actually it has been in operation as a voluntary plan since 1969. He said it was originally drafted after the New Mexico voluntary plan, and he then presented some statistics on the Montana voluntary plan. Mr. Morgan offered an amendment to section 7, page 5, regarding funding of the act, and said that they feel the medical association should pay for it. (For the statistics, see Exhibit 1) (For the proposed amendment, see Exhibit 2)

Gerald Neely, representing the Montana Medical Association, was the next proponent of S.B. 402 to testify. He read and commented on an analysis of Senate Bill 402 which the Montana Medical Assn. had prepared. (See Exhibit 3) In the exhibit there are suggested amendments, and Mr. Neely said that the Montana Medical Association does support S.B. 402 with the amendments.

The next proponent was Chad Smith, representing the Montana Hospital Assn., who said they also support the bill with the suggested amendments of the Montana Medical Assn.. He further said that he thinks this bill can be made to work and that it will cut a lot of the administrative costs.

There were no opponents present, so the committee was allowed to question the witnesses.

CONSIDERATION OF SENATE BILLS 414 and 415:

Senator Roberts, sponsor of these two bills, simply submitted them to the committee as they are self-explanatory.

DISPOSITION OF SENATE BILL 414:

Senator Regan moved that S.B. 414 DO PASS. The motion carried unanimously.

DISPOSITION OF SENATE BILL 415:

Senator Towe moved that S.B. 415 DO PASS. The motion carried with Senator Regan abstaining.

THE TRANSBOUNDARY EFFECT
SAFEGUARDING THE POPLAR RIVER IN MONTANA

AN EQC STAFF REPORT

BY

RONALD J. SCHLEYER

OCTOBER 6, 1976

MONTANA STATE LEGISLATURE
ENVIRONMENTAL QUALITY COUNCIL
HELENA, MONTANA

REP. THOMAS O. HAGER
CHAIRMAN

JOHN W. REUSS
EXECUTIVE DIRECTOR

THE TRANSBOUNDARY EFFECT: (SB 343)
Safeguarding the Poplar River in Montana

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S.B. 245 - Senator Murray moved to amend page 3, line 10, by striking "and" and inserting "or". The motion carried unanimously.

Senator Towe moved to amend page 3, line 9, following "may", by inserting ", in its discretion,". This motion also carried unanimously.

Senator Murray moved that S.B. 245 as amended DO PASS. The motion carried with Senator Towe voting "No" and Senators Warden and Regan excused.

S.B. 213 - Senator Olson moved that S.B. 213 DO NOT PASS. The motion carried unanimously, but with Senators Warden and Regan excused.

SJR 16 - Senator Roberts moved DO NOT PASS. The motion carried with Senator Murray abstaining and Senators Warden and Regan excused.

S.B. 222 - Senator Murray moved that S.B. 222 DO NOT PASS. The motion carried with Senator Towe voting "No" and Senators Warden and Regan excused.

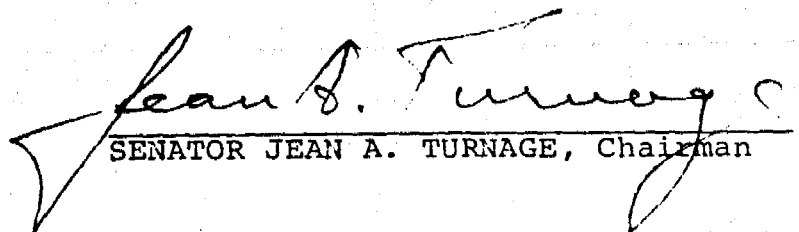
S.B. 255 - Senator Roberts moved to amend page 1, line 25, by striking "\$100" and inserting "\$250". The motion carried unanimously. He then moved that S.B. 255 as amended DO PASS. The motion carried unanimously.

S.B. 385 - Senator Murray moved that S.B. 385 DO PASS. The motion carried with Senator Towe voting "No".

S.B. 418 - Senator Lensink moved that S.B. 418 DO NOT PASS. The motion carried with a vote of 4 - 2 and 2 excused.

S.B. 393 - Senator Towe moved to strike the effective date. The motion carried. He then moved that S.B. 393 as amended DO PASS. The motion carried on a vote of 5 - 1 with Senator Olson voting "No".

There being no further business at this time, the committee adjourned at 12:10 p.m..


SENATOR JEAN A. TURNAGE, Chairman

March 14, 1977

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SENATE JOINT RESOLUTION #16:

SENATOR BROWN, DISTRICT #10:

I introduced this as a courtesy to Representative Mular. The idea of this resolution was to back up the amendment of Representative Huennekens.

GREG MORGAN, STATE BAR OF MONTANA:

This is a question of trying to do something for the level of competency in the bar. The supreme court ought to be in the best position to determine who is eligible for the bar. I would like to urge you to vote against it.

THE HEARING CLOSED ON SJR #16.

THE HEARING OPENED ON SENATE BILL #393:

SENATOR BROWN, DISTRICT #10:

This bill will provide for enforcement of the state air and water pollution laws by the Department of Health and Environmental Sciences against Canadian residents. It also is concerned with air and water pollution in the provinces of Canada, and the open-pit mining of coal right adjacent to Glacier Park. This could have an adverse effect on Cabin Creek. Cabin Creek drains into the North Fork of the Flathead River, which in turn drains into Flathead Lake. Flathead Lake is only 70 miles and would make an ideal settling pond which is a rather gruesome situation. The Canadian laws against pollution are not very strict, so what we propose to do is get them into court for creating a nuisance. He went on to discuss in more detail some aspects of how this might work. He introduced James Cummings, from Columbia Falls, the attorney for the Flathead Coalition, which is a citizens group who are very concerned with the adverse effect of coal development in the Cabin Creek area.

Because Representatives Nathe and Halvorson intended to testify on the bill but had to leave to attend other committee meetings Chairman Scully asked them to testify before Mr. Cumming.

REPRESENTATIVE NATHE, DISTRICT #1:

I am in support of the bill. He mentioned the International Joint Commission, which is a possibility, but may be available only after the damage has been done. They were set up to apportion water. I think this bill is a fantastic measure to help with this. In 1922 in Trail B.C. a lead plant was putting noxious fumes into Washington and they tried to get an agreement. It took 16 years to try to get an arbitrary agreement. They then called in the IJC and that took three more years.

REPRESENTATIVE HALVORSON, DISTRICT #16:

She gave the background on the Cabin Creek development, and mentioned they had become concerned about the activity there.

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Last session I introduced a Joint Resolution and it just flew through. We are worried that it might take too long to get some protection. The Canadians are concerned also but they do not have the strick anti-pollution laws that we have. The Flathead Coalition was formed to fight that.

JAMES CUMMING, ATTORNEY, FLATHEAD COALITION:

I am here mostly to answer questions but I would like to read a text from the British Columbia Wildlife Federation, with 20,000 members. He read the paper and presented a copy to the committee to be included in the testimony. He then mentioned, all this bill does is change the definition of the word person to include, and persons resident in Canada. He gave an example of long arm jurisdiction which is working out very successfully. This has been used and used effectively. He gave examples of this in cases in other countries. In each of these cases these people who were agreed, went into court and brought action in their own local court. If you can go directly into court then you have a much happier citizen. He talked about the mercury pollution in Ohio. He mentioned that Rio Algan & Pan Ocean Oil Company. The Rio Algon is the major portion but is a subsidiary of Rio Tink Zinum, Inc. This is the largest mining operation in the world. This is a real whopper of a corporation and we have a great deal of anxiety about it. They will be the company involved with this operation, it appears from all indications to date.

There followed discussion about the including of persons in Canada. Mr. Cumming mentioned that the BC government has a reciprocal enforcement of judgment act. This might be an interesting test of that act. Discussion about Rio Algan Limited.

REPRESENTATIVE RAMIREZ:

Is there a treaty now.

MR. CUMMING:

No, there is only the 1909 Boundary Water Treaty. This is concerned only with the diversion of water and has never been used.

MR. RAMIREZ:

Was there any opinion in the Dow Chemical Case.

MR. CUMMING:

Yes. He gave a copy of the decision to the committee.

REPRESENTATIVE ROTH:

Is there a problem now or is it only anticipatory.

REPRESENTATIVE HALVORSON and SENATOR BROWN explained to her the actual conditions as they are now. Senator Brown went on to

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explain. This is the kind of coal that is used for coking coal. He explained the type of coal, the sulphur content, etc. and that it is very good coal and not very deep, thus ideal for mining at minimum cost. They haven't made the final decision yet, but we are concerned about the strong potential. He went on to explain the operation and how the coal is laid out and what might happen.

REPRESENTATIVE RAMIREZ:

Is the reciprocal act to enforce judgment.

MR. CUMMING:

They have enforced some judgments. The IJ Commission has taken the position that they can do nothing until the two countries can agree.

REPRESENTATIVE COURTNEY:

Asked of Mr. Nathe, is there a problem in your area.

MR. NATHE:

Yes, the Poplar River Basin. We have put enough pressure that they have now taken a look at the water quality.

REPRESENTATIVE HAND:

Are the Canadians really more lenient about pollution.

REPRESENTATIVE HALVORSON:

Yes, and she went on to explain how she had talked with Canadian representatives and their feeling about the problem. They are equally as concerned.

REPRESENTATIVE BAETH made the comment that Congressman Baucus was interested and trying to do something on the federal level.

After some other general discussion the hearing closed on SB 393.

THE HEARING OPENED ON SENATE BILL #402:

SENATOR MURRAY, DISTRICT #50:

This bill creates a preview panel for medical malpractice. We worked up some amendments. The purpose is to prevent the filing of malpractice actions against doctors where the facts do not seem to be an actual well-founded claim.

GREG MORGAN, STATE BAR OF MONTANA:

We support the bill. Here we are back on medical malpractice. We spent about 3 hours with Mr. Neely about amendments. I recommend that you "do pass".

GARY NEELY, MONTANA MEDICAL ASSOCIATION:

We do support the bill but we do have some amendments. This type of legislation would be a great help to the health care providers.

JUDICIARY COMMITTEE
EXECUTIVE SESSION

March 16, 1977

The Judiciary Committee held an executive session at 9:10 a.m. following the regular meeting, in room 436 of the Capitol Building, Helena, Montana. Chairman Scully presided. Members absent and not voting were Representatives Colburn, Kennerly and Seifert.

SENATE BILL #101:

REPRESENTATIVE DUSSAULT moved to reconsider action taken at an earlier meeting. After some discussion the question was called and the motion carried with Representatives Keyser and Roth voting "no". It was then decided to hold the bill for action on another day after allowing time for further study.

SENATE BILL #187:

REPRESENTATIVE HAND moved "be concurred in".
The motion carried with the vote unanimous.

SENATE BILL #132 (water):

REPRESENTATIVE LORY moved to accept the sub-committee report, "concurred in as amended". The motion carried with the vote unanimous. (copy attached)

SENATE BILL #316 (water):

REPRESENTATIVE LORY moved to accept the sub-committee report, "be concurred in". The motion carried with the vote unanimous.

SENATE JOINT RESOLUTION #20 (water):

REPRESENTATIVE LORY moved to accept the sub-committee report, "be concurred in". The motion carried with the vote unanimous.

SENATE BILL #230:

REPRESENTATIVE ROTH moved "not concurred in". The motion carried with the vote unanimous.

SENATE BILL #254:

REPRESENTATIVE RAMIREZ moved "be concurred in". The motion carried with Representatives Dussault and Hand voting "no".

SENATE BILL #311:

A heated discussion about what was involved and what effect this bill would have was carried on for some time before Representative Ramirez moved "to pass for the day", in order to give the committee time for more study. The motion carried with the vote unanimous.

SENATE BILL #326:

REPRESENTATIVE KEYSER moved "be concurred in". The motion carried with the vote unanimous.

SENATE BILL #393:

REPRESENTATIVE RAMIREZ moved "be concurred in". The motion carried with Representative Hand voting "no".

SENATE BILL NO. 393

INTRODUCED BY BROWN, R. SMITH

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR ENFORCEMENT OF THE STATE AIR AND WATER POLLUTION LAWS BY THE DEPARTMENT OF HEALTH AND ENVIRONMENTAL SCIENCES AGAINST PERSONS RESIDENT IN CANADA AND PERSONS WHO CANNOT BE LOCATED IN MONTANA; AMENDING SECTIONS 69-3906, 69-3921.1, 69-4802, AND 69-4820.1, R.C.M. 1947; ~~PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-3906, R.C.M. 1947, is amended to read as follows:

"69-3906. Definitions. Unless the context requires otherwise, in this act: (1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof.

(2) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants in a quantity and for a duration which is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life, property, or the conduct of business.

(3) "Emission" means a release into the outdoor

atmosphere of air contaminants.

(4) "Person" means an individual, partnership, firm, association, municipality, public or private corporation, subdivision or agency of the state, trust, estate, or any other legal entity and includes persons resident in Canada.

(5) "Advisory council" means the air pollution control advisory council provided for in section 82A-606.

(6) "Board" means the board of health and environmental sciences, provided for in section 82A-605.

(7) "Department" means the department of health and environmental sciences, provided for in Title 82A, chapter 6."

Section 2. Section 69-3921.1, R.C.M. 1947, is amended to read as follows:

"69-3921.1. Civil penalties ~~== actions against~~ defendants not found in Montana. (1) Any person who violates any provision of this chapter, or any rule enforced thereunder or any order made pursuant thereto, shall be subject to a civil penalty not to exceed one thousand dollars (\$1,000). Each day of violation shall constitute a separate violation. The department may institute and maintain in the name of the state any enforcement proceedings hereunder. Upon request of the department, the attorney general or the county attorney of the county of violation shall petition the district court to impose,

REFERENCE BILL

SB 0393/02

1 assess and recover the civil penalty. The civil penalty is
2 in lieu of the criminal penalty provided for in section
3 69-3921.

4 (2) ~~(a)~~ Action under subsection (1) of this section is
5 not a bar to enforcement of this chapter, or of rules or
6 orders made under it, by injunction or other appropriate
7 civil remedies.

8 (b) An action under subsection (1) or to enforce this
9 chapter or the rules or orders made under it may be brought
10 in the district court of any county where a violation occurs
11 or is threatened if the defendant cannot be located in
12 Montana.

13 (3) Moneys collected hereunder shall be deposited in
14 the state general fund."

15 Section 3. Section 69-4802, R.C.M. 1947, is amended to
16 read as follows:

17 "69-4802. Definitions. Unless the context requires
18 otherwise in this chapter:

19 (1) "Sewage" means water-carried waste products from
20 residences, public buildings, institutions, or other
21 buildings including discharge from human beings or animals
22 together with ground water infiltration and surface water
23 present.

24 (2) "Industrial waste" means any waste substance from
25 the process of business or industry, or from the development

1 of any natural resource together with any sewage that may be
2 present;

3 (3) "Other wastes" means garbage, municipal refuse,
4 decayed wood, sawdust, shavings, bark, lime, sand, ashes,
5 offal, night soil, oil, grease, tar, heat, chemicals, dead
6 animals, sediment, wrecked or discarded equipment,
7 radioactive materials, solid waste, and all other substances
8 that may pollute state waters;

9 (4) "Contamination" means impairment of the quality of
10 state waters by sewage, industrial wastes, or other wastes
11 creating a hazard to human health;

12 (5) "Pollution" means contamination, or other
13 alteration of the physical, chemical, or biological
14 properties of any state waters, which exceeds that permitted
15 by Montana water quality standards, including, but not
16 limited to, standards relating to change in temperature,
17 taste, color, turbidity, or odor; or discharge of any
18 liquid, gaseous, solid, radioactive, or other substance into
19 any state water which will or is likely to create a nuisance
20 or render the waters harmful, detrimental, or injurious to
21 public health, recreation, safety, welfare, livestock, wild
22 animals, birds, fish, or other wildlife. A discharge which
23 is authorized under the pollution discharge permit rules of
24 the board is not "pollution" under this chapter.

25 (6) "Sewerage system" means a device for collecting or

1 conducting sewage, industrial wastes, or other wastes to an
2 ultimate disposal point;

3 (7) "Treatment works" means works installed for
4 treating or holding sewage, industrial wastes, or other
5 wastes;

6 (8) "Disposal system" means a system for disposing of
7 sewage, industrial, or other wastes, and includes sewerage
8 systems and treatment works;

9 (9) "State waters" means any body of water, irrigation
10 system, or drainage system either surface or underground;
11 however, this subsection does not apply to irrigation waters
12 where the waters are used up within the irrigation system
13 and the waters are not returned to any other state waters;

14 (10) "Person" means the state, a political subdivision
15 of the state, institution, firm, corporation, partnership,
16 individual, or other entity and includes persons resident in
17 Canada;

18 (11) "Council" means the state water pollution control
19 advisory council provided for in section 82A-607;

20 (12) "Board" means the board of health and
21 environmental sciences, provided for in section 82A-605;

22 (13) "Department" means the department of health and
23 environmental sciences, provided for in Title 82A, chapter
24 6;

25 (14) "Local department of health" means the staff,

1 including health officers, employed by a county, city,
2 city-county, or district board of health;

3 (15) "Point source" means any discernible, confined and
4 discrete conveyance, including but not limited to any pipe,
5 ditch, channel, tunnel, conduit, well, discrete fissure,
6 container, rolling stock, or vessel or other floating craft,
7 from which pollutants are or may be discharged;

8 (16) "Owner or operator" means any person who owns,
9 leases, operates, controls or supervises a point source;

10 (17) "Standard of performance" means a standard adopted
11 by the board for the control of the discharge of pollutants
12 which reflects the greatest degree of effluent reduction
13 achievable through application of the best available
14 demonstrated control technology, processes, operating
15 methods, or other alternatives, including, where
16 practicable, a standard permitting no discharge of
17 pollutants;

18 (18) "Effluent standard" means any restriction or
19 prohibition on quantities, rates and concentrations of
20 chemical, physical, biological and other constituents which
21 are discharged into state waters."

22 Section 4. Section 69-4820.1, R.C.M. 1947, is amended
23 to read as follows:

24 "69-4820.1. Additional enforcement remedies. (1) In
25 addition to all other remedies created by this act, the

1 department is authorized to take appropriate enforcement
2 action on its own initiative to:

3 (a) prevent, abate, and control the pollution of state
4 waters;

5 (b) prevent, abate, and control any violation of a
6 condition or limitation imposed by a permit issued under
7 section 69-4806, R.C.M. 1947;

8 (c) prevent, abate, and control any violations of
9 regulations relating to pretreatment standards.

10 (2) In furtherance of subsection (1) of this section,
11 any person violating any condition, limitation, standard or
12 other requirement established pursuant to this chapter may
13 be served with a compliance order issued by the department.
14 Such order must specify the condition, limitation, standard
15 or other requirement violated and must set a time for
16 compliance. However, in establishing a time for compliance,
17 the department shall take into account the seriousness of
18 the violation and any good faith efforts that have been made
19 to comply with the condition, limitation, standard or other
20 requirement that has been violated. The compliance order
21 issued under this section shall be personally served by an
22 authorized representative of the department.

23 (3) The department is authorized to commence a civil
24 action seeking appropriate relief, including a permanent or
25 temporary injunction, for any violation which would be

1 subject to a compliance order under subsection (2) of this
2 section. Any action under this subsection may be commenced
3 in the district court of any county in which the defendant
4 is located or resides or is doing business or any county
5 where a violation occurs or is threatened if the defendant
6 cannot be located in Montana, and the court shall have
7 jurisdiction to restrain such violation and to require
8 compliance.

9 (4) Any person found to be in violation of a
10 condition, limitation, standard or other requirement
11 established pursuant to this section shall be subject to the
12 penalty provisions of section 69-4823, R.C.M. 1947.

13 (5) For the purpose of this subsection, the term
14 "person" shall mean, in addition to the definition contained
15 in section 69-4802, R.C.M. 1947, any responsible corporate
16 officer."

17 ~~Section 5 - Effective date - This act is effective on~~
18 ~~its passage and approval~~

-End-